

# Montana Transportation Commission

## February 28, 2008 Meeting

MDT Commission Room  
Helena, MT

### IN ATTENDANCE

Nancy Espy, Transportation Commissioner, Vice Chairman  
D. Winterburn, Transportation Commissioner  
Rick Griffith, Transportation Commissioner  
Kevin Howlett, Transportation Commissioner  
Jim Lynch, MDT Director  
Jim Currie, MDT Deputy Director  
Loran Frazier, MDT Engineering  
Tim Reardon, MDT Chief Counsel  
Carol Grell Morris, MDT  
Lori Ryan, MDT  
Sandra Straehl, MDT Rail, Transit & Planning  
Duane Williams, MDT  
Dick Turner, MDT  
Kevin McLaury, FHWA  
Mike Duman, FHWA  
Ted Burch, FHWA  
Anne Pichette, Governor's Office  
Dennis Dirks  
William Hanson  
Todd Reier

*Please note:* the complete recorded minutes are available for review on the commission's website at [http://www.mdt.mt.gov/pubinvolve/trans\\_comm/meetings.shtml](http://www.mdt.mt.gov/pubinvolve/trans_comm/meetings.shtml). You may request a compact disc (containing the audio files, agenda, and minutes) from the transportation secretary Lori Ryan at (406) 444-7200 or [lrain@mt.gov](mailto:lrain@mt.gov). Alternative accessible formats of this document will be provided upon request. For additional information, please call (406) 444-7200. The TTY number is (406) 444-7696 or 1-800-335-7592.

### ***OPENING – Commissioner Nancy Espy, Acting Chair***

Commissioner Espy called the meeting to order. After the pledge of allegiance, Commissioner Howlett offered the invocation. Introductions were made.

### **Approval of Minutes of the December 6, 2007 Meeting, December 17, 2007 Conference Call, January 4, 2008 Conference Call, and the February 4, 2008 Conference Call.**

Commissioner Espy presented the minutes from the December 6, 2007 Regular Commission Meeting, December 17, 2007 Conference Call, January 4, 2008 Conference Call, and the February 4, 2008 Conference Call. There were no additions, deletions, or changes made to the minutes.

Commissioner Griffith moved to approve the minutes of the December 6, 2007 Regular Meeting, December 17, 2007 Conference Call, January 4, 2008 Conference Call, and the February 4, 2008 Conference Calls. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item 1: Off System Bridge Program.**

Sandra Straehl presented the following to the Commission. MDT staff is requesting Commission approval for the admission of four bridges in the Yellowstone Bridge Program to begin preliminary engineering. These bridges are located in Missoula, Glendive, Great Falls and Butte Districts, in Sanders, Valley, Hill and Jefferson counties respectively. The first bridge is across the Cabinet Gorge with a turn, a walk free bridge ... (inaudible). the third is a ... (inaudible) ... 30 miles northwest of Havre, and the fourth is the Jefferson River Bridge five miles south of Three Forks. They all need to be reconstructed. This action would enter these projects into preliminary engineering. The actual letting dates will be determined by future Commission action through the TCP process. The total cost for preliminary engineering is \$1,555,295.00 and staff is recommending that the Commission approve the admission of these projects into the program.

Commissioner Howlett moved to approve the Off System Bridge Program as presented. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item 2: Bridge Deck Repairs**

Sandra Straehl presented the following to the Commission. Item No. 2 is the bridge deck repairs on Interstate 15 in the Great Falls District. MDT staff is requesting the addition of this project into the Bridge Deck Program on six structures on I-15 between Ulm and Great Falls. The locations of these are shown in the Agenda Item. Two of them are at reference post 270, two of them are at reference post 279.9, and then two of them are on the Fifth Avenue Southwest Overpass in Great Falls at reference post 280.0. The total cost for this is estimated at \$1.3 million, the actual letting dates will be established in the TCP process. Although the estimated construction date is 2009, that will be determined later by the Commission. At this point in time the staff is recommending the Commission approve the admission of this project into the program.

Commissioner Howlett moved to approve the Bridge Deck Repair for the Great Falls District. Commissioner Griffith seconded the motion. All four Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item 3: Enhancement Program on MDT Right-of-Way, Broadwater Crossing – Billings, On Street Bike Lanes – Billings Poly Drive Sidewalks – Billings, Teton Avenue Sidewalk – Valier, Bicycle/Pedestrian Bridge – NW of Three Forks.**

Sandra Straehl presented the following to the Commission. This item is the admission of the five enhancement projects into the program. Three of these enhancement projects are located in Billings. All of these are either adjacent to or crossing state right-of-way and as is the Commission policy, if a project is adjacent to a state right-of-way, Commission action is needed. The first project is Broadway Avenue crossing. That's Urban Road 1006. The crossing would create a refuge island with signing, lights, and sidewalk connections. This particular project is estimated to cost \$106,000. The second project is 1,100 feet of sidewalk and improved approaches on Holly Drive in Billings. This is Urban Route 1031. Estimated total cost of this project is \$158,000. The third project is a bike lane that is adjacent to Urban Route 1021 on North 30<sup>th</sup> Street in Billings. It would build a bike/pedestrian lane for almost \_\_\_\_\_ miles. Taken together these projects, once constructed, will obligate \$6.3 million of the \$7.0 million that has been made available to date to Billings for the CTEP Program. The fourth project is the Teton Avenue sidewalk in

Valier. This project is 140 linear feet of sidewalk in the Great Falls District, Pondera County CTEP dollars would be used for this project. Total estimated cost is \$500,512. This project will have obligated \$291,000 of the \$300,000 that has been made available to date for the CTEP Program in Pondera County. All of these are fiscally constrained; none of them will be borrowing against future allocations. The fifth project is a bicycle/pedestrian bridge northeast of Three Forks. It is in the Butte District. It would be using Gallatin County's Enhancement Allocation. It will be adjacent to MDT right-of-way on I-90 at approximate reference post 278.8. The construction bridge will cross the Madison River east of the town of Three Forks. This one also is fiscally constrained; it will be using pretty much all the CTEP money that's been made available to Gallatin County to date. All of these bike/pedestrian facilities will be developed and delivered in accordance with all federal and state requirements. On that, the staff is requesting that the Commission approve the admission of these projects into the program.

Commissioner Griffith moved to approve the Enhancement Program on MDT Right-of-Way, Broadwater Crossing – Billings, On Street Bike Lanes – Billings, Poly Drive Sidewalks – Billings, Teton Avenue Sidewalk – Valier, Bicycle/Pedestrian Bridge – Northeast of Three Forks. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

The motion passed unanimously.

#### **Agenda Item 4: I-94 Rumble Strips**

Sandy Straehl addressed the Commission as follows: Agenda Item No. 4 is the request to add rumble strips on I-94 into the Program. These would occur in the Billings District. The project is approximately 23.6 miles in length; it would be built on I-94 on reference points 23.9 and 47.5. This is one of the few areas on the Interstate system that does not have rumble strips. The district has requested that rumble strip would be constructed in advance of some preservation work that has had to be pushed out in the program because of financial issues. Total estimated cost of the project is \$110,000. This has been reviewed internally by staff for potential construction in the summer of 2008 and there is room in the program to allow this to be built. There is a concern about safety on that stretch of highway and to wait for the rumble strips to be built with the rest of the preservation work that is coming in 2010 or possibly 2012, is considered to be hazardous from the District's point of view. The District would like the Commission to approve the admission of this project into the program and also that it would be constructed in the 2008 construction season.

Commission Griffith asked if they went ahead and did the projects this summer, then in 2010 would it be paved over? Sandy Straehl said if they were constructed in 2008, paving might happen in 2011-2012, so the idea is to get as much maximum life out of these as is possible before the paving work does come in. The paving work will pave them over and there will be new rumble strips put in at that a time on the new project, but there is a concern about the delay of the rumble strips.

Director Lynch said the department in the future will be looking at rumble strips very similar to the way they look at striping. There is evidence out there that they work and are very effective in avoiding head-on collisions. So this may be something that we bring to you in the future – rumble striping a roadway knowing that in a few years we are still going to reconstruct it because we think that timeframe is still important. Commissioner Winterburn asked if he was talking about the center lane. Director Lynch indicated it was not center lane. He noted there are states that have been very aggressive in rumble striping all their center lines including their dash lines. Commissioner Espy said the rumble strips are invaluable. Commissioner Winterburn agreed. Commissioner Griffith asked for clarification on the placement of the rumble strips. Director Lynch said they would be on the shoulders – on either side of the shoulders. Commissioner Griffith said the rumble strips they put in the center

line up towards Big Sky were doing a good job. Director Lynch said noise is the down side to rumble strips. If people don't stay in the lines, at 2 a.m. when a car hits them and drives on them for a while, they create some noise in heavily populated, but the benefits far outweigh the noise. Initially the comments from the motorcycle industry showed they weren't too overly excited about rumble strips, however, the last Safety Conference in Bismarck said different states had pretty good contact with the motorcycle industry and they were not seeing as much resistance from them on rumble strips. They've kind of taken the stand that if they prevent someone from coming across in front of them, then they would find a way to live with them.

Commissioner Griffith moved to approve the I-94 Rumble Strips. Commissioner Winterburn seconded the Motion. All four commissioners voted aye.

The motion passed unanimous.

### ***Agenda Item 5: Culvert Rehabilitation***

Sandy Straehl addressed the Commission as follows: Agenda Item No. 5 is the request to add culvert rehabilitation on I-15 into the program. There are four locations. These were identified when culverts were being reviewed for potential failure. These need to have repairs and if they are let into the program now for preliminary engineering the expected total cost would be \$1.3 million. The actual letting dates would be determined by Commission action in the TCP Process. All of these need to be rehabilitated and are consistent with the overall survey and study that was done statewide. The staff is recommending the Commission approve the admission of this project into the program. The location is I-15, reference point 284, 288.8, 331.2, and 363.7.

Commission Howlett asked if they are being entered in the Red Book and then the ready date would be set later. She said yes and explained they would be entering this into preliminary engineering. The actual ready date is dependent on two things: the engineering complexity of when the project can be made ready after the environmental and design work is completed, and also the build. The actual letting date will be determined with future Commission action in the TCP.

Commissioner Griffith moved to approve the Culvert Rehabilitation on I-15. Commissioner Howlett seconded the motion. All four commissioners voted aye.

The motion passed unanimous.

### ***Agenda Item 6: Railroad Crossing – New Signal Installation***

Sandy Straehl addressed the Commission as follows: This agenda item would add a railroad crossing new signal solution into the program. It is located in Mineral County in District One. The location is known as Reardon Drive. It is a crossing with MRL Railroad. There are two ways that a railroad crossing signal can enter the program: one of them is because of all the statewide prioritization; the other way is a combination of statewide prioritization and local funding support. In this particular case, the county is cost participating with the state and contributing 50% of the state's cost on this project. The total cost to the state would be \$120,106, Montana Rail Link is responsible for the construction and the county is cost participating with an equivalent level to the state. The staff is recommending the Commission approve the addition of this project into the program.

Commissioner Howlett moved to approve the Railroad Crossing – New Signal Installation at Alberton. Commission Griffith seconded the motion. All four commissioners voted aye.

The motion passed unanimous.

### **Agenda Item 7: Functional Classification for Reserve Loop in Kalispell MT 15(71)-Reserve Loop - Kalispell**

Sandy Straehl addressed the Commission as follows: Agenda Item No. 7 is request for the approval of a functional classification for the Reserve Loop Road in Kalispell. Reserve Loop is part of the complex that is being constructed on the Kalispell Bypass. Functional classification describes the function a road provides. At one end you have land access that is provided by local roads, at the other end you have regional and international mobility provided by principle arterials. For federal aid money to be made available, the functional classification has to at least provide the status of a major collector which provides mobility and land access. This particular road has been looked at from the perspective of principles of functional classification. It serves major destination point, which is the High School. We've worked on this with the City of Kalispell and it has been determined that the functional classification of this particular road should be that of a major collector. We are asking you to approve the functional classification as a major collector for the Reserve Loop and then we will ask FHWA to concur. FHWA has final approval on functional classification because it creates eligibility for federal aid money. So at this point in time we are asking the Commission to concur with the functional classification of Reserve Loop as a major collector in Kalispell. We have a fully coordinated with the Local Government Planning Office on this.

Commissioner Howlett moved to approve the Functional Classification for Reserve Loop in Kalispell MT 15(71)-Reserve Loop-Kalispell. Commissioner Griffith seconded the motion. All four Commissioners voted aye.

The motion passed unanimous.

### **Hearing – Appeal of an Outdoor Advertising Case**

Tim Reardon was asked to give the Commission some background on this case. Tim Reardon said this was an appeal of an Outdoor Advertising case that was conducted by a Hearings Officer last October. By way of background this has to do with a sign permit that was issued to a Mr. Todd Reier in Gallatin County to erect a sign that was in an unzoned area. The sign permit was to advertise an on-premise business. The issue arose subsequent to the time this was done. The permit was first issued in 2004. Over time the Department's OAC people did an investigation, made a determination that the advertising sign was out of compliance with the Administrative Rules and filed Notice of Intent to Revoke the Permit. At that time the sign owner challenged it, which is their right, and asked for a hearing on the revocation notice. A Hearings Officer from the Attorney General's office was appointed, Mr. Melcher, who conducted the hearing in October. You have all that information in front of you. The sign owner, through their attorney Mr. Hanson who is here to argue the case today, filed an Exception to the Findings of Fact and Conclusion of Law and Recommended Order of the Hearings Examiner. Exceptions are simply a legal mechanism by which they can challenge the recommendation of the Hearings Officer to you as the final arbitrators of the administrative process. So they filed their Exceptions and also the law provides that they can ask for oral argument and that is what you are here for today. Your ultimate decision will be to either accept the recommendations of the Hearings Examiner and his recommended Order, you can

modify that and/or you can reject it. If you modify or reject, under the Administrative Procedure Act, you have to be able to go to the record and specifically identify in the record and justify why you would not accept the Recommendations of the Hearings Examiner.

So you have those three options and I will tell you at the conclusion of the oral argument today, and I believe the way the Notice went out, each side will be given one half hour to present their case. You can make your decision today, you can if you wish review the information presented today in Oral Argument or within the record that you already have, and at a subsequent date you can then conference call or at another meeting make your final decision.

The thing I would tell you is that the parties have been pretty diligent, from what I can tell, in trying to get this matter through the process and in front of you today for a decision. I know Mr. Hanson has brought some demonstrative exhibits for you. You should have all of the exhibits that were in the Hearings Examiner's file in front of you along with the briefs of the parties and their arguments. Mr. William Hanson is here on behalf of the sign owner. Carol Grell Morris is here on behalf of the Department. Unless you have any questions of me, that is essentially the background of where we are at. The issue is whether or not the Recommended Order to Revoke the Permit should be adopted, modified, or rejected.

***Mr. Hanson addressed the Commission as follows:*** Thank you I appreciate the introduction and I would like to clarify a couple of points. Ladies and Gentleman of the Commission my name is Bill Hanson. I'm the attorney representing Todd Reier. The permits in question before you today are in fact permits for Off Premise Advertising not On Premise Advertising. That point needs to be clarified and the record would make that clear and I'm sure the department would agree that is indeed the case.

Myself, Carol, and the four of you present here today, have a daunting task. You have something like 100 pages of documents before: the Proposed Findings of Fact and Conclusion of Law from Mr. Reier, the permit holder; the Proposed Findings of Fact and Conclusions of Law of the Department; you have the Proposed Decision of Mr. Melcher; you have the sign holder's Objections; you have the Reply Brief of Carol Grell Morris. In fact you have available to you, as part of the record, the entire Deposition of Pat Hurley, the Office of Advertising Control Coordinator. You have almost 16 hours of the body of recording which represents the Hearing in this case. That is a daunting task for you to determine the issues that we're asking you here today.

It's awkward for me to say this but I think that it is necessary for me to say this – your job as citizens representing the people of the State of Montana in the capacity as Commissioners for this Board is to know the contents of those documents at least before you make your decision. And I would urge you also to take the time, not today but at some other time, to listen to the transcript after you've heard our argument and determined for yourself whether you believe that an error has been made in the way that Mr. Melcher's proposing the outcome of this.

What I want to do today, my goal, is to focus your attention on the question “who is responsible for determining compliance for the State's duty to comply with the Federal Highway Beautification Act.” And in that connection, I have put before you three pages. If you take a look at those right now, those are Exhibits that I'm showing you simply to illustrate my points. I'm not offering them into evidence; this is information available on your website.

Back in 1965 or so Congress passed the Highway Beautification Act. Pursuant to that, in 1971 the Montana Legislature adopted the Outdoor Advertising Act which became effective on June 21, 1971. The task of administering that Act was delegated

to the Right-of-Way Bureau which in turn delegated it to the Outdoor Advertising Coordinator. That is on the second website with the highlighted material in yellow, the second page of my demonstrative exhibits. The website indicates that the Outdoor Advertising Program involves review, approval, or rejection of sign permit applications. The point I want you to take away from this review of where we are today, the question involving Outdoor Advertising Permit, is that the job of reviewing, approving, and granting permits in Outdoor Advertising is the Outdoor Advertising Coordinator, Mr. Hurley and his people, not the permit holder or the applicant.

A couple of things I want to mention about the Outdoor Advertising Act – that’s contained in Montana Code 75-15-101 through 75-15-134. Specifically 75-15-111(1) prohibits Outdoor Advertising in general, period. It creates seven exceptions. One of those exceptions is stated in (e) and it permits outdoor advertising in certain unzoned commercial or industrial areas. Then 75-15-111(2) requires that signs that are authorized under that exception to the general rule, they are permit required in the rules that are adopted by the Commission. Those are the rules that are in play in this particular case. The fact of the matter is the task of administering this Act was assigned to the Outdoor Advertising Coordinator.

In order to start the process, the applicant files an Application with the Outdoor Advertising Control folks and the third page of the demonstrative exhibits before you is the back page of that Application. This comes from the website; this form can be downloaded. And the one point I want to direct your attention to is point six under Directions that says “the applicant must clearly mark the exact location of the proposed sign to enable the department personnel to perform the required site inspection.” Then also there is a note at the end of that, that says “because of the rules and regulations, the variety of them, be sure to contact Outdoor Advertising Control Agent to make sure the process is going right.”

In this particular case the difficulty frankly that Mr. Reier has in persuading you that Mr. Melcher’s decision should be modified is that the Administrative Law in the State of Montana frankly states that his Findings of Fact on the credibility of witnesses is something that you are to defer to. In this particular case what happened in essence was that Mr. Wolf, the occupant and operator of the commercial activity in question here, said six months after the permits were issued that he was not conducting a commercial activity and that he in fact, before the permits were issued, had told Mr. Reier that. I think that if you were to ... there is really no ....

Com Griffith: If you’re talking about the character of an individual and trying to meld that to this process, I’m having a little bit of a difficult time with that.”

Mr. Hanson went on to explain. Good question and it highlights a point that needs to be made at this point. I think it is clear who has the power to issue the permit; I think it is clear that a permit was issued here; then the question is “when can the Department revoke a permit?” Section 75-15-132 is the only statutory authority that grants the Department the power to revoke a permit once it has been issued. And the permit holder’s position and contention has been throughout that is the only source of power that the Department has to revoke a permit once it’s issued.

What are the standards for revoking a permit under that statute? The answer is if the applicant makes willfully false or misleading statements in his Application, then the permit can be revoked otherwise there is no authority or power anywhere in the statutes to revoke a permit. Our position is that the Department did not prove satisfactorily that Mr. Reier willfully made false or misleading statements in his Application when he submitted it in March of 2006 to the Office of Outdoor Advertising Control. And here is where character and credibility comes into play, Sir. The only direct evidence in the record of Mr. Reier allegedly knowing that there was

no commercial activity going on came from Mr. Wolf. So we have a question of Mr. Wolf's credibility versus Mr. Reier's credibility. And what I want to do today is to suggest to you and urge you to consider that what has happened, what Mr. Melcher in his Proposal has done, is turn the duty of doing an investigation over to Mr. Reier, after the fact, in a hearing 18 months after the Application is made when circumstances have changed. And I want to suggest to you that under the case that I cited in our Brief in support of our Exceptions, the case involving the renewal of the Teaching Certificate, that the record in this particular case that Mr. Melcher discarded and in fact declared Mr. Wolf to have made untrue statements in his testimony yet at the same time he chose to believe Mr. Wolf when Mr. Wolf in essence testified that he had told Mr. Reier that he was not conducting a commercial activity before Mr. Reier made these Applications.

Our point is this, Mr. Hurley and Mr. Reier had a conversation in 2004. At that time Mr. Hurley believed that Mr. Reier was going to open up a real estate office, operate it for a year, and then make an Application for two off premise signs. I don't think there is any dispute about the fact that that is what Mr. Hurley told him and that is what he said. That is in the recorded record. Then in March of 2006 Mr. Reier submitted an Application but it didn't have his real estate office as the commercial activity, it had Wolf Byte Computer. At that time Pat Hagadone and Ms. Campbell came out to Bozeman and went out to take a look and do a site inspection – the gate was locked, there was a phone number for the business on a sign out there and they saw that. They didn't do anything at that point in time beyond that to contact Mr. Wolf; pick up the phone and make a short phone call.

Com Griffith: I took a lot of time to read all of these documents.

Mr. Hanson: I appreciate that.

Com Griffith: And as best I could as a lay person and not a lawyer, understand them. And I'm a little confused about a comment you just made about Wolf Byte Computers and the real estate business. Which was it?

Mr. Hanson: At the time the permit was submitted, Mr. Reier believed that Wolf was operating the computer repair business "Wolf Byte Computer." At the time the Permit was received Mr. Hurley was thinking, based on his earlier conversation with Mr. Reier that Mr. Reier was going to operate a business. In fact when he ...

Com Griffith: It was issued to do what? Was it real estate or was it a computer repair?

Mr. Hanson: Mr. Reier believed at the time he made the Application, and this is the note of the case, did Mr. Reier honestly believe at the time he submitted the Application that Mr. Wolf was in fact operating a PC Repair business. There is no question in the record whether or not it was ....

Com Griffith: But you have two individuals that had a competing interest in this piece of property?

Mr. Hanson: No Sir. What we had was in 2004 Mr. Reier acquired the property and he talked to Mr. Hurley, and Mr. Hurley came down to Bozeman and talked to Mr. Reier about what would be necessary to qualify the property for off premise signage. At that time there was discussion between the two of them and one of them said "for instance, if you put a real estate business here and



it operates for one year that would get you two off premise signs.” That came from Mr. Hurley and that was ....

Com Griffith: Mr. Reier never intended to do the real estate business?

Com Espy: Commissioners I’m going to ask that you write your questions down to ask at the end of the presentation.

Mr. Hanson went on with his presentation. I think it’s a reasonable question because it bears directly on the point I’m attempting to make here that there was a conversation, “what if I put a real estate business there?” Then there was a for instance “if you put a real estate business here and operate it for one year then you’d get two signs.” That is what Mr. Hurley thought might happen and that’s what he believed and that’s what he testified he believed in March of 2006 when he received the Application. Mr. Hurley looked at the Application that had the tentative approval and recommendation for approval of Campbell and Hagadone and said “Gee I thought it was going to be a real estate business but here it is Wolf Byte PC Repair.” You get the idea when you look at his testimony that he is scratching his head like “what’s going on.” He didn’t call Mr. Reier; he didn’t call Mr. Wolf; he didn’t do anything to get that point clarified when he could have and in fact signed off on the permits and the permits were issued. And based on that, then, Mr. Reier spent \$45,000 and put up the signs. He had the permits in hand and the day after the signs went up the neighbors complained to Outdoor Advertising Control and another investigation ensued six months later. At that point in time, when circumstances were changed and were different than in March of 2006, Mr. Hurley and his people concluded that Mr. Reier knew when he submitted his Application that Mr. Wolf wasn’t operating a business. That was based on what Mr. Wolf said and it was done without contacting other parties with relevant evidence in the case, for instance Mr. Wolf’s roommate, a Mr. Olson, the contractor whose name was given to the Department by Mr. Reier as a person who would testify and indeed did testify that Mr. Wolf said to him that he was running a PC Repair business up on the Bozeman Hill.

What I’ve done here today to give you an example of the kind of mistakes that Mr. Melcher made was to prepare a few very short excerpts of the Hearing Transcript, put them on my IPOD and I’m going to play them for you because I want you to hear the tone and the demeanor of Mr. Wolf. I want you to hear how he flatly denies for instance, and for this you are going to need to take a look at Exhibit PH-105, the permit holder’s exhibit. It is a Commercial Lease, the term of which is November 7, 2004 through May 31, 2006. It is Exhibit PH-105. In the clip I’m playing you it is referred to as part of Exhibit K but I will attest to you that they are one and the same. I want you to hear Mr. Wolf and what he has to say about line 10 on page 1 of Exhibit PH-105. There were two Leases involved here and this is the later Lease.

This first excerpt, I direct your attention to line 10 where he says “d/b/a Wolf Byte.” This is the Department’s attorney asking Mr. Wolf a question about this item. Mr. Hanson played the following recording of the transcript:

Ms. Grell Morris: Did you in fact sign the lease?

Mr. Wolf: I signed the Lease, yes.

Ms. Grell Morris: Ok, let’s look at Exhibit A, so you’re looking at a Lease from May of 2005. Is that correct?

Mr. Wolf: Yes and no. This is a Lease that on line 17 says “this shall begin on November 17, 2004, at which time it will terminate on May 31, 2006.

Ms. Grell Morris: Did you sign that Lease along with CJ in May of 2005?

- Mr. Wolf: This particular Lease? No, because the spelling of my name is incorrect and I am just adamant about the spelling of my name.
- Ms. Grell Morris: Show us where you're seeing the incorrect name spelled.
- Mr. Wolf: On line 10 it says d/b/a Wolfe Byte and it is Wolfe with an "e", and my name is never, period, spelled with an "e".
- Ms. Grell Morris: Ok, the correct spelling of your last name is Wolf?
- Mr. Wolf: Yes.
- Ms. Grell Morris: No "e" on the end of it. Correct?"

Now the point of asking you to listen to that and enduring that is that Mr. Wolf says he did not sign those. Now contrast that with the Hearings Examiner's Proposed Decision where he, in fact, finds that that Lease was signed by Mr. Wolf with those words on it. He finds that those words were not inserted by Mr. Reier as Mr. Wolf alleges. Number one – a substantial proven, factual, discrepancy between the official documentary evidence and what Mr. Wolf had to say and ties into the case that I cited regarding the renewal of the teaching certificate case because it shows a substantial contradiction and inconsistency of Mr. Wolf and it goes to the point that there is no substantial, uncontradicted testimony that Mr. Wolf in fact told Mr. Reier he was not operating a commercial activity. The second illustration that I want you to listen to concerns Exhibit PH-103, a little further up in your stack, and is a copy of and envelope that looks like this (showing hard copy of exhibit to the Commission). I realize that this is arduous and difficult.

The point I want to make here is Mr. Wolf denies receiving this until December of 2006 or January 2007. Mr. Reier's Proposed Findings that in fact were based on the reasonable inference that this was received by Mr. Wolf on or about May 18, 2005, but nevertheless refused to make those Findings which was we contend, an error. Mr. Hanson played the following recording of testimony):

- Mr. Wolf: He showed me some documents and paperwork and a mailed envelope that he gave me informing that I really was in business and that I breached contract and it wasn't very pretty.
- Ms. Grell Morris: Ok, tell us about this envelope.
- Mr. Wolf: It was an 8½ x 11, brown manila envelope that had Wolf Byte PC Repair written on it.
- Ms. Grell Morris: It was addressed to Wolf Byte?
- Mr. Wolf: It was addressed to Wolf Byte PC Repair, it had been mailed to the 19676 Bozeman Hill Road address, and it had the cancelled post mark on it.
- Ms. Grell Morris: If it would have been mailed to that address, shouldn't it have been in your possession?
- Mr. Wolf: It should have been, yes.
- Ms. Grell Morris: But you had never seen it before Todd came into see you?
- Mr. Wolf: Never!

The point of that is that on Cross Examination Mr. Wolf admitted that was his writing – the "Todd Reier" and the note on it "please give me a call". The Lease that is Exhibit PH-105 was signed by Mr. Reier on or about May 9, 2005, which is the date of the postage on Exhibit PH-103. The Lease was signed by Mr. Wolf and his roommate, C.J. Pasenow, about May 17, 2005, and Mr. Reier had the original of that Lease in his possession from that point forward. And there is no contradictory

evidence except for the fact that Mr. Wolf says in a heated argument, after the second investigation by the Department occurs, with Mr. Reier, this is the first time ... and I write on here "Todd give me a call tonight" in the middle of this heated argument, to explain how it is that he's got an envelope addressed to him that says "Wolf Byte Computer". Our point in playing this to you is to illustrate the fact that there is inconsistent, contradictory testimony from Mr. Wolf that justifies you to find, based on all the other evidence in the record, that Mr. Melcher made a mistake in finding Mr. Wolf more credible than Mr. Reier on this point. He's already rejected the idea that Mr. Wolf is claiming d/b/a Wolf Byte was inserted later and that he didn't sign that. In fact that was not correct. There is a substantial fact about his testimony that Mr. Melcher found to be nonexistent.

Now quickly let's look at the other evidence presented. The other evidence in the record supporting Mr. Reier's position that he believed there was a business going on was the testimony of Mr. Olson. I have that here to play so you can hear it or I can put it on a CD and send it to you and you can listen to it at a later time. Mr. Olson says on this segment, in the record, "Mr. Wolf told me that he was running a PC Repair business on Bozeman Hill." That's there. C.J. Pasenow testified that Mr. Wolf repaired a computer. Our position is that Mr. Melcher erred in being selective about what to believe and what not to believe and that you should review the entire record to determine for yourselves if there is substantial credible evidence that Mr. Reier knew in March of 2006 that he willfully, falsely, and misleadingly said when he knew it not to be the case that Mr. Wolf was operating a commercial activity. The only evidence, the only direct evidence, of anything to the contrary comes from Mr. Wolf.

To conclude, the Hearings Examiner was given the opportunity through the permit holder to enter as a Proposed Finding of Fact, the fact that now, and this is Proposed Finding of Fact 62 that was rejected, that the Department testified during the hearing that all assertions of fact contained in Off Premise Sign Applications are now investigated fully and independently. And our position is that what Mr. Melcher has done by saying at page 11 of line 16-17 of his Proposal for Decision ... Reier was in the best position to know whether Wolf actually ran a business ... shifted the entire burden of the Outdoor Advertising Control's job to Mr. Reier after the fact when circumstances had changed and hard feelings had developed and that was wrong.

Com Espy:            Thank you Mr. Hanson.

***Ms. Carol Grell Morris addressed the Commission as follows:*** I'm Carol Grell Morris and I'm an attorney for the Department of Transportation and I did represent the Outdoor Advertising Control Program during the matter before you today. I found Mr. Hanson's presentation kind of confusing so I thought that I would try and orient you a little better as to what we are doing with this case and why the points that he made were not of any relevance.

As Mr. Hanson was trying to point out with his Exhibits that he gave you today, which are not part of the record so he's sort of trying to slip something in there on you. Montana MDT is the state agency charged with enforcing the Highway Beautification Act, but you already know that. And our Outdoor Advertising Control Program, he was correct, is the part of the agency that enforces the Highway Beautification Act. We have both statutes and rules that give us authority to do that and they are followed by the Outdoor Advertising Program. So that brings us to the case before us.

Mr. Reier is the owner of the property that is located at 19676 Bozeman Hill Road. It's on the Bozeman Hill just as you are going east from Bozeman itself. It lies on the south side of Interstate I-90 and is near milepost 321 in Gallatin County. If you've driven I-90, you've seen it. On about November 7, 2004, Mr. Reier, who owns this property which has a house and garage located on it, leased the property to a man

named Kris Wolf and his then girlfriend C.J. Pasenow. Both of those people testified, that's why we are so familiar with them like friends of ours. Those were the tenants that were leasing the property from Mr. Reier. They jointly occupied that property. C.J. also had two children, so there were the four of them in the house from November of 2004 through June of 2005. Now those dates are going to become significant because the rule states that you must have a qualifying commercial business on the site for one year at the time you apply for permits. So I give you this background – the permits hadn't been applied for at that time, but Mr. Wolf and C.J. and the two kids were living there from November 2004 through June 2005. Now at that time C.J. and the kids moved out. So from June of 2005 through May 2006, which is when the Applications went in, Wolf was the only person there. His first name is Kris and he currently runs a contracting business but at that time he was new to the state from Georgia or somewhere and so was renting this while he tried to get set up in Montana. So he was there by himself living in this house which has a garage from June of 2005 through May of 2006.

When he first moved in, Mr. Wolf was asked by the landowner, Todd Reier, if a business sign could be placed on the property and Mr. Wolf agreed. He even chose the name. He said "let's call it Wolf Byte PC Repair." That was meant to be an On Premise sign and you guys know the difference – On Premise advertising what's happening on that property; Off Premise advertising services or goods that are available elsewhere. So this was going to be an On Premise sign and advertise what happened on that property – Wolf Byte Computer Repair. A little play on his name Wolf and you heard him say he's very proud of his name and it has to be spelled right – so Wolf Byte PC Repair. So Mr. Reier bought that sign, although it wasn't his business and Mr. Wolf wasn't running a business, Mr. Reier bought the sign and brought it out to the property and placed it leaning against the garage. I guess there was some testimony that it was at various parts of the property but when we first saw it, Outdoor Advertising, it was leaning against the garage. You have photos of that in your Exhibit – it says "Wolf Byte PC Repair." That was bought by Mr. Reier, the landowner, placed on the property by Mr. Reier, the landowner, but Mr. Wolf agreed.

So we heard a lot of testimony during our Hearing which took two days. We did one day here in Helena and one day down in Bozeman because some of the witnesses were from Bozeman. Mr. Wolf testified during that Hearing. He of course no longer lives on the property, but he drove to Helena and testified during that portion. His testimony was that he didn't operate a business on that site; there was no Wolf Byte PC Computer Repair and there never was. He also testified that he reported that to Todd Reier, who was the landowner, many times. He only agreed to let Todd to put the sign there but he testified that they also had an arrangement that he was going to be obtaining a business license that Todd Reier was going to be obtaining. He didn't want to do a business without a business license, couldn't afford it, and his testimony was that Reier had agreed to do that for him and never did. So Wolf's testimony was that he kept reminding him every time he would pay the rent or see him, "Hey Todd what about that business license?" "Hey Todd I don't have a business going on yet." "Hey Todd where are we with my business license?" His testimony was there was never ever was a business on that site.

Of course the sign was still leaning against the garage and it had a phone number on it. So he was asked in his testimony "well didn't anyone ever call?" And his testimony was "yes they did." His response to "what did you reply" was "I told them I'm not running a computer repair business." I don't know if he had other names to give them or what he did but his testimony was that he did not respond to those calls by repairing computers because he wasn't running a business. So he presented all that testimony. We had a Hearings Officer there; we had sworn testimony; we had everything all set up for our little Hearing there, and that was his testimony.

Well at some point as I mentioned, he and C.J. broke up and she moved out. So that situation went on with the sign being there, people calling and him turning them

down, and then she moved out. Again that was July 2005. So he disconnected that phone number. He didn't want to be getting calls from people looking for C.J. So actually from the time she moved out, which again was almost a year before the Permit Applications came in, the phone number didn't even get you anything. You could call it but you'd get a little recording that it was disconnected. So there really was no business there and Wolf testified to all these facts – the sign had been put there by Todd, he told Todd he had no business, he disconnected the phone number, but the sign was still leaning against the garage there.

So you heard Mr. Hanson talk a little bit about this meeting that occurred between Pat Hurley from our Outdoor Advertising Control Program and Mr. Reier. He is getting you a little out of order chronologically. See that meeting occurred way early – Pat went down to the location and they talked about Off Premise signs and Pat testified to that. We have all his testimony. That was accurate – they went down there, they talked about how he would qualify this property for Off Premise advertising and it was explained that he had to have a commercial business there, and they talked about what types of businesses. So I don't want you to be confused by that. They did talk about a real estate business but no real estate business was ever placed on the property; it was a discussion about how to qualify the property. The reason that became significant during our Hearing was that it was clear that Mr. Reier knew the requirements to get a permit for Off Premise advertising. He had met with Mr. Hurley actually on two occasions. He actually met with Deanna Campbell from Outdoor Advertising on a third occasion. He was well aware of what was required. The Hearings Examiner found that that meant to him that when Todd Reier placed the sign there, that was his attempt to mislead the public, if you will, perhaps mislead Outdoor Advertising; pretend there is a business here, I'll put a sign here against the garage and then everyone will think there's a business and I'll qualify for two billboards for Off Premise advertising. So that's why that meeting with Pat became kind of significant because it clearly shows that Todd Reier knew the requirements for Off Premise advertising.

So again, here is what we've got – we've got Kris Wolf living in this house and this garage, we've got a little sign leaning against this garage, CJ moves out, phone number is disconnected, no business happens. Again Kris Wolf is a carpenter, so he was working a carpenter job. He'd go into build things or build houses or whatever he was doing every day. He wasn't doing computer repair and he testified to that. So on March 2006, so now Mr. Wolf has been living there by himself since June. So now we're in March of 2006 and Mr. Reier contacts the Outdoor Advertising Program and says oh my god we have a big rush here, Gallatin County is going to impose zoning regulations, it's going to include my property and I'm not going to get my billboards. Oh my gosh, rush, rush, rush, I must apply today; I must get permits from you people. So Outdoor Advertising, in an effort to accommodate him, actually drove to Bozeman, two of our people, and he mentioned their names although he got one of them mixed up, Allen Hagadone and Deanna Campbell; they are our Outdoor Advertising staff. They took applications and drove down to Bozeman and met with Mr. Reier so he could hurry, hurry, hurry and fill out this Permit Application. Again this is all testimony that I'm just reviewing for you and the Hearings Officer certainly heard all of this. So they drove down there, Mr. Reier began to fill out the Applications in his office, not at the site, they were in an office downtown in a building. Meanwhile Deanna and Allen drove out to the property because you have to measure for outdoor advertising signs – how far is it from the building, how far it is from the highway, and all those types of things that need to be discovered. So they drove out to the property, they saw the Wolf Byte PC Repair sign which had been there for some time by this time, and they did all their measuring. They have a little GPS thing; they drive in the car to get the exact distance; and it's all real cool actually. So they did all that. They did all that and then went back to the office in downtown Bozeman and Mr. Reier had filled out the Applications and those are in your packets; you saw them. And Mr. Reier had put down Wolf Byte PC Repair. So Mr. Hansen attempts to blame Outdoor Advertising people – it's their fault, they should have

done this, they should have done that. Ultimately the Applicant is responsible for what he puts on that Application and signs. And he put on the Application Wolf Byte Computer Repair was the business on that property. The Hearings Examiner found that was a misleading statement. He found that Mr. Reier knew that there was not a business operating there first of all because Mr. Wolf kept telling him there was no business there. Every time he ran into him, every time he came to him, "I don't have a business, I don't have a business." But Mr. Reier went ahead and listed it on those Permit Applications. Again his intent, found by the Hearings Examiner, was to qualify the site for Off Premise advertising; that was his sole reason for putting down that there was a business there because otherwise it doesn't qualify, as you know, under the statutes and rules.

So the Outdoor Advertising Control Program granted the Permits. There are actually two permits at issue here. I'm not sure that was clear to you in earlier discussions. You can qualify two billboards on a qualifying location and Mr. Reier applied for two permits; he wanted to put up two billboards, one on each end of the property and he did that. So on April 4, 2006, the Permits were granted.

Mr. Hansen also made reference to somehow he challenged it six months later, once again it's interesting how you can twist the facts to make that sound like some kind of suspicious activity. In fact, the Permits were granted in April. Our rules say that you have 60 days to put them up. Well in fact, Mr. Reier couldn't get them up by that time; he had problems with materials or contractors or whatever, and he asked for an extension, and he asked for a second extension. So the billboards didn't actually go up until November but that was due to Mr. Reier's inability to get them up, it wasn't Outdoor Advertising telling him not to put them up or changing their minds or anything. They went up November 20, 2006, and on the very day after, November 21, 2006, Outdoor Advertising Control received a complaint. A neighbor, Liz Wire, actually submitted a written complaint, and that should be in your materials as well, and she said "these don't qualify, I live in this area and drive by this property every day, and there is no business there. So if Outdoor Advertising thinks there is and granted Permits based on that, you ought to think again."

So we have this written Complaint and Outdoor Advertising must respond to it, and an investigation was conducted. Again we had testimony about all of that at the Hearing. And the reason I keep saying that is Mr. Hanson's ... I think you can boil down his Exceptions, and that is what he wrote to show you how the Hearings Examiner was wrong. If you boil that down, what he's saying is that the Hearings Examiner was wrong, he didn't believe Todd Reier, he believed Kris Wolf. And the Hearings Examiner is the person who sat through the hearing. The Hearings Examiner is the person who observed the witnesses, looked at all the exhibits, saw their demeanor, and heard the Cross Examination. Hearing excerpts like this can be awfully misleading because we don't know what was said on Direct or on Cross, you are only hearing a tiny little snippet. The Hearings Examiner, in fact, heard the entire testimony. So a statement made on Direct but later challenged or weakened on Cross, the Hearings Examiner was in a position to hear all that. So he's the best person to weigh their credibility and he, in fact, did that in his Findings.

So back to our little story here ... on November 21<sup>st</sup> OAC goes down and investigates and talks to the tenant in the house at the time, and it was not Mr. Wolf because he'd moved out by then. Interestingly enough the sign that says "Wolf Byte PC Repair" was still leaning against the garage even though Mr. Wolf had long since moved out. The Hearings Examiner found that significant because he said "well, why did you leave the sign there if you weren't trying to mislead the public and OAC into thinking there was a business there? Why did you leave the sign there long after Kris Wolf had moved out?" So it was still there. They talked to the current tenants, they talked to the neighborhood complainants, and they talked to other neighbors. They brought all that information back and they received information from Todd Reier as well – he submitted some Leases and other information. All that was

available and the Outdoor Advertising Program determined they were going to Notice the Permits for Proposed Revocation. They felt they had enough evidence to show there was no business on the site; there never was a business on the site. And the applicant was misleading when he wrote that there was a business on the site.

So, as has been mentioned and I won't go over again, we did open the contested case, and as you know we appoint a Hearings Officer and he conducts all the Discovery and the Motions; he is an attorney with the Department of Justice, so he handles all the legal aspects of it which culminated in our Hearing which took a couple of days. We had quite a few witnesses from both sides. At the conclusion of that Hearing, the Hearings Examiner presented his Proposal for Decision and that is the document that is at issue here today and you have that in front of you. Mr. Melcher did a very thorough job. He addressed not only his own Findings of Fact and Conclusion of Law, but he addressed each of the Proposed Findings that the parties have submitted. He went through them all and said here is why I'm not adopting this one, here's why I'm not adopting that one, and he was correct in doing that. He was there to weigh all the evidence – he had the written Exhibits, the Leases, the photos, and all the other Exhibits. He had the whole testimony available, both Direct and Cross, all different witnesses some of whom contradicted each other, and he came up with these Findings in which he proposed to revoke the Permits. As you know his Findings were that the testimony of the tenant, Kris Wolf, was more credible – there never was a business. And he felt the site never did qualify for permits and the little signs mean there was an attempt to mislead and to pretend that there was a business there. And he recommended revocation of the Permits, which you have before you as a Recommended Order and you have the ability to make your final Order.

I'm going to address a couple of points Mr. Hanson made just in case you had any questions about them this is the Department's position on it. Mr. Hanson argued fairly early on that there was only one statute that gives OAC the authority to revoke permits and it was based on willful, false, or misleading statements in Applications. That's not correct, and in fact the Hearings Examiner specifically found several other statutory citations and rule citations with authority. He felt that 18-6-203, which was in the Hearings Examiner's Conclusion of Law, there was no business that ever existed on the property, it didn't qualify. He found 75-15-111, that the general statute that talks about how you can qualify outdoor advertising, and he found that this did not. He found 18-6-203 that states if you are putting a business on a property for the sole reason that you want to qualify it for advertising, it doesn't qualify. And he found that the presumption that even claiming there was a business there had not been overcome. The presumption that you're pretending a business is there just to qualify it for outdoor advertising had not been overcome. We can presume that's what happened; they put a sign up and pretended a business was there just to qualify it for two permits. The Hearings Examiner gave specific citations as to why that had not been overcome in this case and allowed the Department to revoke the Permits and remove the signs. So there is authority found elsewhere and if Mr. Hanson wants to argue that the one statute is the only statutory authority, it still works because the Hearings Officer found there were willful, false, and misleading statements on that Application – when Mr. Reier filled out that a business existed in the site, that is the statement at issue here.

Just a couple more that Mr. Hanson said – he tried to talk about this Lease that Mr. Wolf said that wasn't his name on it or that it was his name on it and this envelope; "well that was sent to you, you must have a business." Well there was testimony about both of those items but as you note the Hearings Officer discounted all of it. He didn't find any of that relevant. The key was, was there a business on the site? He did not think that whether the "e" was on Lease when he signed it, or whether or not the envelope was ever mailed, or who had it in his possession, he didn't find any of that relevant as I don't either. In fact the testimony about whether or not a business existed on the site was key to this whole thing. So I wouldn't let myself get led astray by envelopes and Leases with e's on them.

First I want to talk about removing the signs and then I just want you to look at some pictures and then I'm done. So the statute says that once outdoor advertising is determined to be unlawful, the Department may remove the signs. It gives the Outdoor Advertising Program authority to go on the property, remove the signs, and also to charge the cost of removal to the sign owner and the landowner, which in this case is the same person, Todd Reier. We have that authority under statute. Once the permits are revoked; that advertising is unlawful. You can not have billboards up there for off premise advertising when there isn't a qualifying business. So if they are unlawful, the signs must come down. I want you to know that the Hearings Officer specifically found in his Proposed Order, he says "it is hereby ordered that the Permits, the two of them, are revoked and the Department may remove or cause to be removed the signs as provided in Montana Code Annotated 75-15-131 and Montana Administrative Rules 18.6.264." So I would urge you, in your deliberations on whether or not to adopt this, to be certain that the removal is part of your Order if you are going to adopt the Hearings Officer's Order because the removal is a key part of this. The current revocation is one thing but the signs shouldn't be there either. So if the permits are revoked, the signs must come down. And the Hearings Officer recognized that and gave you the citations to where your authority is to do that and I would urge you to be cognizant of that when you're looking at any Proposed Order.

The last thing I want to do here ... you know this case hinges on what was done on that property. So although you have these photos, they are all in your books in the black and white version, so I thought I would show you the colored version of the photos. You see the property; it has a house on it and a garage on it. There are no other buildings. You can see the photo of the garage; here is a better photo of the back of the house with some tenant's belongings scattered about. This is not a business. This is the actual sign leaning against the garage. You can see the date. Those are the billboards; this photo was taken after the billboards were put up. The photos of the sign show the date they were taken, December of 2006. Keep in mind that Kris Wolf had moved out about eight month's earlier and the sign remained on the property. The Hearings Examiner found that significant, that it was an attempt to deceive. These are the billboards that were ultimately erected. There are two of them; again there are two Permits the qualified for two signs. They are either end of the property and one of the photos shows them in a wide shot of the two sides of the property. So those are the colored photos and they are repeats of what's in your packet but may be a little easier to see. Again the reason I show those to you is that it is quite clear that this was in fact a residence. It's clear that this was rented out for residential purposes. It is clear that there was no business there. And it is clear that the sign was put there to try and pretend that there was a business there.

In conclusion, I urge you to adopt the Hearings Examiner's Proposed Order for Permit Revocation of Both Permits and Removal of the Signs. Thank you.

Com. Espy: At this time the Commission can ask questions of the lawyers concerning the statements they have made here today. If you want to question from the record, it must be said on the record.

Com. Griffith: Regarding this photograph, what is one to interpret as For Lease? The sign space is for lease or the property is for lease?

Carol Grell Morris: That to me indicates that the sign face is for lease.

Com. Griffith: So wouldn't that be off site advertising?

Carol Grell Morris: That's correct. And it was permitted for off premise advertising until we began the permit revocation process. So had the permits



remained in place, off premise advertising could have been put on those billboards.

Com. Griffith: But the original Application was for on site “Wolf Byte Computer”.

Carol Grell Morris: No that’s not correct. The on site sign was the little one leaning against the garage and you don’t need a permit for that. That’s his on premise sign advertising supposedly a business on this premises – that little one that leaning against the garage. You don’t need a permit for that. He wanted two big permitted signs so he could do off premise advertising.

Com. Winterburn: I just have to find out, and Kevin asked this question before but I need to know again, when this man applied for this permit, did he apply for a permit for his real estate company? Did he say “I want this for a real estate company?”

Mr. Hanson: No he did not. He identified Wolf Byte.

Com. Winterburn: So he was willing to put out \$45,000 for his renter’s business?

Mr. Hanson: No the \$45,000 was for the qualifying the signs of Wolf Byte PC Repair, the commercial activity, permitted under ....

Com. Winterburn: What I’m asking you is this – he constructed these signs for \$45,000?

Mr. Hanson: Correct.

Com. Winterburn: For Wolf Byte PC Repair?

Mr. Hanson: No. He constructed them for himself based upon the fact that the Outdoor Advertising Control Program Coordinator knew that Wolf Byte PC Repair was the qualifying commercial activity that would entitle the owner of the property to put up two independent billboards for off premise advertising. The signs were put up after the Application was submitted and approved. And the whole point of the exercise that we are attempting to get to you here today is whether or not, at the time Mr. Reier put Wolf Byte PC Repair on that Application, he *knew* that Wolf Byte PC Repair was not operating there. One of two things is true: there was in fact a commercial activity going on at the time or there was a reasonable basis for Mr. Reier to believe that; or Mr. Reier willfully, *willfully* made false, *willfully* made a misleading statement. And our position is, if Mr. Hurley had a question in his mind, just like you did, whether or not there was a real estate business or a PC Repair business there, he could have so simply found that out. And that is the point of the statutory scheme – it’s the Department’s job to do that investigation and it had the means and the opportunity to do that. If Mr. Reier submitted that at the time knowing that Wolf Byte was not operating ... that’s almost incredible in itself. He submits it *knowing*? That’s insane! Why would you do that? I’m going to sneak it by these people? Well I suppose that’s a possibility, but if they had done their job, dialed that phone number on that sign ... I want to talk to Wolf, who operates this business, what’s going on? And Mr. Hurley didn’t do that. That’s our point – the State can only conclude, only prove, that Mr. Reier made a willfully untrue

misleading statement if you believe Wolf. What we attempted to do in the short time we had available here is to show you that Wolf said he didn't sign that Lease and in fact Mr. Melcher said yes he did. Those words were there; Mr. Reier didn't stick them in there. That is a significant contradiction. And that is why the State failed to prove that Mr. Reier *knew* there was no commercial activity when he put Wolf Byte PC Repair on that Application.

Com. Espy: Hearing no questions, we will close this hearing at this time and we will be discussing this later and we will give you our decision.

Mr. Hanson: Thank you for permitting us to make our argument today.

Hearing Closed

### **Agenda Item 8: Outdoor Advertising, Adoption of Notice of Proposed Administrative Rule Changes**

Director Lynch passed out a Draft of the Proposed Rule Changes. We are requesting the Commission is allow the Department of Transportation to conduct a public hearing to modify one of our rules on outdoor advertising. This refers to the electronic variable message signs that we currently have in our rule process. What has happened since this rule was written is the technology has changed in outdoor advertising and there has been some talk within the industry and Federal Highways received a memorandum from their office dated November, 2007, requesting that they work with state agencies throughout the country to look at the wording of their definitions for commercial electronic variable message signs and see if that wording needs to be changed and modified to comply with what is happening in the technology of outdoor advertising. We still feel that our definitions do apply but for the sake of making it clearer and eliminate some congestions, we are going to ask for a public hearing to modify one definition and add one. Modify the commercial electronic variable message signs definition to strike the word "electronic" and add the words "other than electronic billboards" and then we are going to add a fifth definition called "electronic billboards". That would mean a changeable or non-changeable electronic signs on the message board will be changed on site by remote through hard wire or by wireless communications and have the capability to present any amount of text or symbolic imagery. The term includes but is not limited to additional signs and light emitting diode (LED) signs. The term does not include the definition of the signs ... (inaudible) ... and are included in the definition to be modified in one above. That is one thing we are going to ask in the public hearing.

Then we are going to ask that we have a rule addressing commercial electronic variable message signs, which are now called commercial variable message signs, and the rule is: "off premise commercial ~~electronic~~ variable message signs, regardless of the message or prohibited in controlled areas." But since we have a new definition, we are then going to ask that we have a rule that says "off premise, commercial, or electronic billboards, regardless of the message, are prohibited in controlled areas." It puts the new terminology in compliance with what was already established in outdoor advertising rules which are prohibited in the State of Montana in controlled areas. That is really the primary reason for doing this. If you can't allow one or the other, they'd be inconsistent. So we are putting in and asking at a public hearing to propose that rule change to just modify the definition for electronic billboards which we hope will be enough to handle what's existing and what may come down the line in the future. The signs would fall under the new definition will also be treated the same way as the variable message signs that are already on our roads.

Commissioner Howlett asked for the definition of “controlled area”. Carol Grell Morris said the controlled areas are the primary routes, and we have a definition of those in the rules. It is all the Interstate and the primary routes in the State. She noted we are currently permitting signs along those controlled routes and you have no control over signs off those controlled routes, and this would be the same. You are only able to control signs along controlled routes. It means your primaries and your secondary routes. Commissioner Espy asked is they would have their own rules separate from ours. Director Lynch said that was correct. If they are on roads that are not in controlled areas. Carol Grell Morris said that was absolutely correct – as those controlled routes go through cities, they are under joint jurisdiction.

Commissioner Howlett asked how it works with Amber Alerts. Director Lynch said that could be a possibility – all the amber alert signs I’ve looked at throughout other states are actually state-owned, I know of no billboard in the private sector that uses theirs for amber alerts. I think the technology is there if need be, but I don’t know what the mechanism would be to get that done. In the research I’ve done on how other states are doing outdoor advertising, no one has told me they are using these signs for amber alert. Commissioner Howlett said he didn’t know too much about them but in the ones I’ve passed, the message changes and shows pictures and they have the ability to do that. I hope we don’t ever need one but it could save a child’s life. I’m wondering why we don’t want them. Why we don’t want these electronic boards – it’s a sign of the times, things are changing. I don’t understand why we don’t want them? I don’t have an HDTV but I sure would like to have one; they are sure a lot clearer. I don’t know why we are opposed to these in Montana. Director Lynch said we are not talking about prohibiting electronic billboards in the State of Montana; we are talking about prohibiting them in controlled areas. There are a lot of other uncontrolled areas that have access to this type of advertising activity, so this rule does not prohibit them; in fact there is one on Montana Avenue that it would not prohibit. It prohibits the use in controlled areas and it goes way back to the Highway Beautification Act that was passed by the US Congress years ago. That is really the purpose behind this. There are seven states currently that prohibit them in various ways and one state that is allowing them and has rule changes to actually prohibit them. Commissioner Howlett asked why we would not want them. Commissioner Winterburn asked what the harm would be. Director Lynch said that would be what the public hearing would be all about. Commissioner Winterburn asked if was to establish whether there is harm; aesthetically? Director Lynch said there could be – there could be a lot of reasons why you wouldn’t want them and I’m sure the people who want the billboards can give you a lot of reasons why they are good to have.

What we are doing here is ... there has been a question raised as to whether or not the definition that controls variable message signs, as created prior to the technology taking place, is adequate to address the technology that is taking place. So we are having a definition to clarify that confusion and then being consistent with that definition as we have in the past with variable message signs. Commissioner Espy said the distraction of those signs is when they are so brightly lit and are flicking, that is a concern on busy highways as well as the aesthetics. Commissioner Griffith said then all signs are prohibited unless we permit them. So it isn’t the signs in the state right-of-way? Director Lynch said whatever is visible from our controlled routes. So we are asking for a public hearing and all these questions will come up. Commissioner Espy said it was very good we were stepping out and having public hearings to hear what the public wants. Director Lynch said he would let the Commission know when the public hearing will be held.

Tim Reardon said the request in front of you is to go forward with a Notice to be filed with the Secretary of State of Proposed Rules to be Adopted by the Commission. There is a time period that has to be followed and in that Notice there would be a determination made for public hearing as to when that would be held,

public comment received; all of that has to be done. You get six months from the time you file to adopt the rule or not. If you do nothing then there is no rule.

Commissioner Griffith moved to approve the Adoption of Notice of Proposed Administrative Rule Changes for Outdoor Advertising. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

The motion passed unanimous.

### ***Agenda Item 9: MT 200 – Bull River, Speed Zone Recommendation***

Loran Frazier presented the proposed speed limit recommendation for MT 200. This is near the intersection of the Bull River Road and MT 56. We recommend a 55 mph speed limit beginning just north of the fire station access and continuing 800 feet east of the intersection with MT 56, a distance of 3,600 feet. It is shown on the map and covers the area of the intersection that has had some growth of businesses. We have a letter from the Sanders County Commissioners concurring with our recommendation. The staff recommends the speed zone as recommended.

Commissioner Howlett moved to approve the Speed Limit Recommendation for MT 200 – Bull River Junction. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

Motion passed unanimous.

### ***Agenda Item 10: Secondary 211 – Round Butte Road – Ronan, Speed Zone Recommendation***

Loran Frazier presented the proposed speed limit recommendation on Secondary 211, Round Butte Road in Ronan. The speed limit we are recommending is a 35 mph special speed limit at station 393+50 and continuing west to 365, an approximate distance of 2,800 feet. I believe there is some railroad track in there that we are putting the speed limit on. Our original recommendations were for a short section of that to be 45 mph. The county pointed out that didn't quite fit the community so we extended our 35 mph and then we'll step up to the speed of Round Butte Road. We agreed with the County and went with their recommendation. The staff recommends approval of the 35 mph speed zone.

Commissioner Howlett moved to approve the Speed Limit Recommendation for Secondary 211 – Round Butte Road – Ronan. Commissioner Griffith seconded the motion. All four Commissioners voted aye.

Motion passed unanimous.

### ***Agenda Item 11: Secondary 471 – Prospect Creek Road, Speed Zone Recommendation***

Loran Frazier presented the proposed speed limit recommendation in Sanders County on Secondary 471, Prospect Creek Road. The Department recommends a 60 mph posted speed limit as milepost 2.1 continuing north to milepost 0.5, approximately 1.6 miles, and a 50 mph speed limit from milepost 0.5 to the intersection of MT 200. The recommendation includes the County's recommendations after reviewing our original stop. If you look at the map, it is about where you have the northbound with 66 and southbound 65. Our original study only went that far and the County asked us to extend that 60 mph speed limit

further out away from the intersection of MT 200, and for the 50 mph would be extended a little bit further. So that is our recommendation and Sanders County would agree. Staff recommends approval of the speed limit.

Commissioner Howlett moved to approve the Secondary 471 – Prospect Creek Road, Speed Zone Recommendation. Commissioner Griffith seconded the motion. All four commissioners voted aye.

Motion passed unanimous.

### **Agenda Item 12: Tri Hill Frontage Road (x-route 07541) Speed Zone Recommendation**

Loran Frazier presented the proposed speed limit recommendation on Tri Hill Frontage Road. It is on a Frontage Road, x-route 07541, located near the airport interchange on the hill up above Great Falls. The Department recommends a 60 mph speed limit beginning at the intersection with 31<sup>st</sup> Street SW and continuing to station 400 on I-15 project, an approximate distance of 1.42 miles. Cascade County concurs with the recommended speed limit. We recommend you approve the speed limit as presented.

Commissioner Griffith moved to approve the Tri Hill Frontage Road (x-route 07541) Speed Zone Recommendation. Commissioner Winterburn seconded the motion. All four commissioners voted aye.

Motion passed unanimous.

### **Agenda Item 13: Reserve Loop Drive, Speed Zone Recommendation**

Loran Frazier presented the speed limit recommendation on Reserve Loop Drive in Kalispell. It was a recently completed project. We did an Engineering Study and recommended a higher speed zone of 45 mph. The representatives of the City of Kalispell pointed out that that area is growing very fast and they recommended the whole route be 35 mph and not just 35 mph near the high school. We looked at what was happening there and concurred. We recommend a 35 mph speed limit beginning at the Stillwater Road Roundabout continuing east to the intersection with US 93, an approximate distance of 1.3 miles. We recommend that you approve this speed limit.

Commissioner Griffith moved to approve the Reserve Loop Drive, Speed Zone Recommendation. Commissioner Griffith seconded the motion. All four commissioners voted aye.

Motion passed unanimous.

### **Agenda Item 14: MT 3 – Billings Northwest, Speed Zone Recommendation**

Loran Frazier presented the speed zone recommendation on MT 3, which is in Billings. Yellowstone County Commissioner Kennedy called and asked the Department to postpone this until the next meeting when he can come and talk about it. Commissioner Espy stated that Commissioner Skelton called and asked that the Commission move this to the next meeting.

MT 3 – Billings Northwest Speed Zone Recommendation was postponed until the next meeting.

**Agenda Item 15: Letting Lists**

Loran Frazier presented the proposed Letting List for February, March, April, May, June and July, August, and September – basically the remainder of the federal fiscal year. Staff would recommend approval of the Letting Lists for the remainder of the fiscal year. Commissioner Griffith asked about project plans for a particular bridge project. He said it was his understanding they were going to move the bridge later in the year. Director Lynch said that was a different funding category. He said the Department would do some research on it and get back to the Commission as to the dates on the jobs.

Commissioner Howlett moved to approve the Letting Lists. Commissioner Griffith seconded the motion. All four commissioners voted aye.

Motion passed unanimous.

**Agenda Item 16: Access Control, Dillon South Connection**

Loran Frazier presented the Amended Access Control Resolution for the Dillon South Connection. The Department has received application for a new public approach in Dillon. It would replace a farm field approach and would be used as a new public street on the south side of the Park Subdivision coming into Dillon. The department recommends that the Transportation Commission approve and execute the attached Amended Resolution that has been revised to allow two public approaches at the right side of Hwy 91 between Union Pacific Railroad and Chadwick Street in Dillon.

Commissioner Griffith moved to approve the Access Control, Dillon South Connection. Commissioner Howlett seconded the motion. All four commissioners voted aye.

Motion passed unanimous.

**Agenda Item 17: Certificates of Completion  
October, November, December**

Loran Frazier presented the Certificates of Completion for the months of October, November and December. Staff would recommend approval of the Certificates of Completion.

Commissioner Griffith moved to accept the Certificates of Completion for October, November and December. Commissioner Winterburn seconded the motion. All four commissioners voted aye.

Motion passed unanimous.

**Agenda Item 18: Project Change Orders  
October, November, December**

Loran Frazier presented the Project Change Orders for the months of October, November, and December. Staff would recommend approval of the Change Orders. Commissioner Howlett asked about the Weeksville and Swamp Creek projects. Loran indicated they were working on the completion of both those projects.

Commissioner Howlett asked if Weeksville was a project that had already been approved. Loran said yes. Commissioner Howlett asked if there were any changes from what was presented. Loran stated that the Weeksville project they were speaking about earlier was the portion of the Weeksville project that was in the middle that was pulled from the plans because the design could not be stage one with the railroad, so they constructed on each side of it and left that piece in the middle for a new design. That is one piece of a roadway improvement that still needs to be completed some point in the future. The Swamp Creek – there is a portion of the Swamp Creek Project that is under construction called Manicke North. There is a Change Order for Manicke North in these change orders.

Loran stated there was one large Change Order on a project in November. It is in the Glendive District on a project called Dodson East. It was a large one of \$700,000. In the work description there was a sentence left off on Change Order No. 4 which says “Change Order No. 4 allows additional excavation due to errors in the existing ground elevation.” There were a couple of areas where the ground elevations in the field during construction were different than when they were surveyed originally and we encountered more soft muck-type of material that we had to sub-excavate for that change order. We had to increase the amount of sub-excavation and that was missing from that. That was the largest change order that we had.

Commissioner Griffith moved to accept the Change Orders as requested by the Department for October, November, and December. Commissioner Winterburn seconded the motion. All four commissioners voted aye.

Motion passed unanimous.

### **Agenda Item 19: Liquidated Damages**

**STPP 29-1(44)0 Ennis – West**

**IM 94-2(31)67 Hysham Interchange – East**

**STPP 14-4(21)146 Lavina-East**

**STPP 45-1)24\_17 Melville – N&S**

**STPHS 5809(19) Safety Improvement – No of Helena**

**STPP 3-2(55)41 Main Avenue – Choteau**

Loran Frazier presented the Liquidated Damages to the Commission. There are quite a few listed; what all of them have in common is the final inspection sheet that we reviewed with the Contractors, they all signed the sheet agreeing to the amount of liquidated damages shown. No action was necessary.

### **Agenda Item 20: Proposed Commission Dates 2008**

Commissioner Griffith asked if the June meeting would be the field meeting. Director Lynch said yes. Commissioner Espy said it would be in her district. Director Lynch said the Department had a lot of projects in the area – one in Miles City and also some Carter County projects. Director Lynch said he was up on the Miles City Bridge and it was a very nice bridge; they did a good job on it.

Commissioner Griffith asked about 323. Director Lynch said the contractor has given notice of when he will start. He is finishing up a project on MT 16 and when that is finished he will start on 323. Commissioner Griffith asked how many miles the project included. Director Lynch said there was around nine miles and there was still a chunk left needs funding to come in to finish. The other thing is this contractor only has two working days left. Liquidated damages will probably be six figures. We are a little disappointed with that.

Commissioner Espy said the Carter County Commissioners were really pressuring the Congressional staff for more money so they can get this all done in one contract. Director Lynch said the Department offered to help them through this appropriation process but they said they would just as soon wait and see what they are going to have this year and see what they would have next year for a larger project. Commissioner Griffith asked if that would finish it. Director Lynch said no it won't unless they get ... for simplifying purposes they get a portion of their earmark every year. They got some this year and they get the final portion next year. That will be the total earmark but that still won't finish it. They are hoping they will receive some more money so they can do a little larger piece of it. We were willing to put another project out this year to spend what they are going to receive under this appropriation process and they've asked us to wait, which I was surprised at.

Commissioner Griffith said with everything going up, who knows what one construction season will do; it is getting rough to try and keep up with the cost of fuel oil and that is going to transcend across the construction industry. Director Lynch said at the last Letting the engineer's estimates were really pretty good and pretty close to what we estimated today. That was encouraging. We had two or three bidders and as many as seven bidders on some projects. So that was also encouraging to see. The ones that are over the engineer's estimates were ones that had fewer bidders, so that tells you what competition does.

Commissioner Espy asked if Carter County really wanted to wait. Director Lynch said yes that's what they were told. Knowing the history, we'll stay on top of it just in case they change their mind. The nice thing about MDT, it doesn't take us very long to put a project together because a lot of the work has already been done.

### ***Agenda Item 21: MCS Scales Design Build Site***

Director Lynch said we received a grant from Federal Motor Carriers Services – 100% federal. It comes from is what they call a BEG Grant, Border Enforcement Grant Program to states that have international borders. They told the State of Montana that because of the border with Canada, we are eligible to apply for this grant, and since it is coming from Federal Motor Carrier Services in relationship to Motor Carrier Service activities, basically trucks. We identified an area up along the border near the Port of Raymond that would service to build that site. That means that it will ... (inaudible) ... a building, and truck inspection equipment as part of the Design Build Program so they can actually access the trucks, containers, look at different trucks to add a little bit more enforcement to the trucks coming into the United States from Canada. It is 100% federal. We are asking this Commission to approve the Design Build project to build that.

Commissioner Griffith asked what the value would be. Director Lynch said Montana doesn't have a lot of truck inspection areas. Commissioner Griffith asked about the cost. Director Lynch said he would get that figure and bring it back to the Commission. Commissioner Griffith asked if it would have to be an unmanned scale. Director Lynch said he could have applied for a grant to build a full manned scale up in that area and Motor Carrier Services agreed a site would be appropriate. We have a portable scale house that can move around the State plus we have roving controls that can we can set up in a particular area. This site will be in conjunction with the other fixed sites that we have along that eastern area.

We have some issue ... not long ago I received a phone call from our scale house in Broadus that had a load of Canadian cattle that was 9,000 lbs over weight. The hauler wanted to break the load down and get legal or since it was a sealed load and you can't break down a sealed load, just go ahead and let them go through. I made



the decision to turn them around and send them back to Canada. And thank God I did because the US Department of Agriculture said that was the only thing you can do. So the truck went back to Canada to basically re-shift his loads and get resealed and come back into the United States. So there is a definite need along the boarder as far as trucking goes. That is just one example of issues.

Commissioner Griffith asked if they were using Raymond as a place to avoid the big scale at Sweet Grass. Director Lynch said they could be – maybe not necessarily use it to avoid the scale but it is just logistics. We have lots of accesses across the Canadian border. Deputy Director Jim Curry said the border in Port McGrath is bigger than just the A site – it essentially takes Hwy 2 and everything north of the Hwy 2 to the border is a “controlled zone” and not only are we building the A-site at Raymond but we were able to get additional Patrol officers as well that can be up in that area so we can keep better tabs on what is going on. And in the future we may be building an A-site north of Havre because of the oil sands they are going to start hauling down.

Commissioner Griffith asked about the destination of the cattle truck – was it from Montana? Director Lynch said it was not from Montana. If it had been from Montana, then they would have another issue but it was destined out of Montana to a feed lot. The only thing we could do was to send it back to Canada. Commissioner Griffith said it was about 10% of the traffic on I-15; you see the US and Canadian flags – nobody is stopping in Montana. Commissioner Espy said it sent a ripple of appreciation through the livestock industry because they have come over over-loaded over and over again because it is a perishable commodity that has to get to a certain location at a certain time and this set a precedent that we are not going to tolerate that any more. The livestock industry appreciated it. It went through from Wyoming to South Dakota and showed up in all the papers and it was a big hurray for the Department of Transportation and the Department of Livestock. Director Lynch said she was right. This whole process was nice piece of work. When this all happened I received a call from the Director of the Department of Livestock and they also supported the decision to send it back to Canada. So it all worked out just great and you’re right it sent a message even to the haulers coming into Canada.

We do have some issues and if they make it to Broadus which is a long ways; if they can get stopped sooner then they can get back to Canada, or if they are Montana trucks that are over weight, they can break their loads before it becomes a problem for the animals. Broadus is very convenient because there is an old feed lot and a county fair grounds there where they can break down their loads – they can bring in water and hay and get more trucks in and load them back up and go. The last four years we’ve taken a stance that that is what we have to do and it is getting better.

Another thing that you’ve probably heard word of is dyed fuel use by Canadians in Montana. The federal law is that you can not use dyed fuel on any licensed vehicle on public traveled roadways in the United States. Some commercial vehicles were cited for running dyed fuel and ticketed – it’s expensive, it’s up to \$1,000. So we are applying that law equally, not just for Montanans but anybody whether they have a Canadian plate or a Montana place or a Washington plate; if they are running dyed fuel on our roads, they are going to get cited. Commissioner Griffith asked if Canada dyes their fuel. Director Lynch said yes but it is a little bit different rule. In Canada if you are a farming entity you can run dyed fuel on the roadways but it has to be a farming activity. You can’t take that pickup with dyed fuel and go to lunch or dinner. That would be a violation of provincial law. In our country, if you are going to use a farm vehicle and it’s licensed to carry a passenger and going to be on our highways, it can’t have dyed fuel. So your option is to run clear and file for a refund. In Canada they can also run clear and file for refunds too.

Regarding the MCS Scales Design Build Site Project, Director Lynch said the value of the grant project is \$500,000.

Commissioner Griffith moved to accept the MCS Scales Design Build Site Project south of the International Port of Raymond on Hwy 16 in Northeast Montana. Commissioner Winterburn seconded the motion. All four commissioners voted aye.

Motion passed unanimous.

## ***Agenda Item 22: Commission Discussion***

Director Lynch said two weeks ago he had the opportunity to go to Billings and talk to the Multi-State Tribal Planners meeting. Federal Highway was there and we had some great dialogue about Montana Department of Transportation's role and how we can assist the tribal planners. We talked about my role as the Director of the Department of Transportation and my work as a liaison with the Tribes and the Memorandums of Understandings that we have on all contracts as well as TERO Agreements and the project specific agreements. We talked about my role as a liaison not just between the Department and the Tribes, but a liaison for the Tribes to the Non-native Americans outside which is valuable. In this last couple of years, we've made great strides with the Native Americans. We are up over 500 Native Americans employed on construction projects. So we've done a pretty good job of trying to bridge that alliance and inform people of the opportunities for tribal employment not just for the projects that are within their Tribes but they can take that employee and move them to other projects. So it was a real productive meeting.

I've also been to Washington D.C. and I have a copy of the National Surface Transportation Policy Review Study. You received a copy of my testimony from a year ago when I went to Minnesota to testify in front of the Commission on behalf of the State of Montana and the rural states. In addition to the State of Montana, the State of South Dakota and the State of North Dakota testified. They took our testimony and testimony from a lot of different factions across the country and they came up with their final copy. And you've probably heard they recommended raising the gas tax. I think it was really unfortunate because this is a pretty good document and raising the gas tax was kind of out of their realm because there is another study commission that handles financing, however, they made a suggestion to fund highways and of course, everybody is concentrating on the suggestion because it was not very popular. It's not very popular on capital hill and it's not very popular for the people who are filling up their gas tanks and I don't know any Legislature that would want to put raising gas taxes as one of his items to get re-elected. It's really unfortunate because that is a very small part of this commission study and that's what everybody focused on and there are some really good things in here. There are also some things that we have to be concerned with. I'll just quickly go through some of the things we think are good in this report and some of the things we are worried about. My job now is to express those worries in every avenue I can, including people within our industry, the American Trucking Association, the Road Builders Association, Montana Contractors Association so that we understand that something that may sound good could in fact hurt Montana.

For example the Study Commission calls for a strong federal role and that is really a strong move because when this first started out there was a lot of talk to eliminate the federal law. Why send our gas taxes into Washington D.C. just to get it back; why don't we just keep some? Well for a donor state like Texas and California who sends more money in than they receive back, that makes very good sense. But for a rural state like Montana and several others, not just in this part of the country but like Iowa and even the mid West ... we have a Federal Transportation System and the State of Montana is responsible for maintaining, upgrading, and improving the Federal Aid System and if we are going to do it just with Montana tax dollars, we wouldn't be able to be anywhere near taking care of the system and the system would

fail. So we're really encouraged that they still said no to a strong federal role. This report talks about the importance of providing funding for rural roads. Prior to our testimony, that wasn't the talk. They were talking about building a system that would only provide funding for the NH System and the Interstate System. Well 40% of our mileage in the State of Montana is off the NH System – not just Montana but other states like Montana. It would again deteriorate the federal highway system.

More federal funding – that's always a good thing. Federal funding needs to meet short term and long term needs. The report talked about that. They talked about the importance of fixing the short term Highway Trust Fund -- there are two estimates out there for the end of 2009. The projected expenditures out of the Trust Fund would be \$4 billion more than the Trust Fund has. The Congressional Budget Office has amended the administration's estimate and they believe it will be somewhere around \$1.4 billion. So there is some difference between the Congressional Budget Office's estimates of where the Trust Fund will be in 2009 versus the Administration's. Keep in mind that has always been that way since they passed SAFTELU; the numbers were much higher, so every year we move in, the amount of the short fall is getting smaller. Senator Baucus has proposed a fix in the Highway Aviation Bill to fix that short fall and the sooner we fix the short fall the better because of what we're doing with contracts. If we waited until the last year to fix it, a \$4 billion short falls last year because of already obligating, performing, doing PE on projects to be performed later, it's a bigger hit than just the \$4 billion. So we are trying to encourage the delegation on the hill. The Montana delegation knows this and they worked very hard to get that provision in the Highway Aviation Preauthorization Bill to fix that hole. Oddly enough what is holding up the Aviation bill is not that fix, no one has a problem with the fix, but the Aviation bill is stalled for some various other reasons.

Streamlining – we've all agreed that streamlining needs to happen. We are very concerned with the way they want to do streamlining. Their idea of performing streamlining is forming another commission very similar to what your is or even worse yet, what I heard in Washington D.C. last week, is a commission very similar to the STP (Surface Transportation Board) of three people. We don't believe that's going to streamline anything; in fact that will probably put a bottleneck in what happens and it may even ... the devil's always in the details. When you come out with a general idea then you put together a program or a format to sell that general idea, that where states like Montana and rural states really have to be careful because we can easily be left out of something that sounds very good because we don't have congestion like they have in other states, we don't have freight quarters, and choke points like they have in other states. So we have to be very careful when they talk about streamlining that the streamlining isn't streamlining rural America out of the Highway Funding Program.

They talked about maybe doing a cost to complete – in this report they took a very optimistic view that highways are important and it doesn't make any difference what they cost, we are going to give you the funding to build them. And the states will be getting funding based on cost-to-complete projects. If that's really what is going to happen, that's great; but we all know that's not going to happen. The US Department of Transportation estimated we needed somewhere around \$350 billion just to maintain the infrastructure that we have. SAFTELU gave us \$280 billion. So we're already short under the SAFTELU and we're six years into the bill, so the history has never been to fully fund the needs of the transportation system. States do a very good job identifying and separating out the "must" from the "needs" and addressing the "musts". So this is an area we are very concerned about. We believe the cost-to-complete can be a disaster to the Highway Trust Fund and a disaster to the Highway Program. One particular job that was on everybody's mind is the big dig in Gloucester, Massachusetts. That is a cost-to-complete project and the cost skyrocketed. Locally – Going to the Sun Highway. It started out as a \$50 million project and what was the latest estimate? And the cost-to-complete would really take

away the efficiency, the incentive to be efficient and build transportation systems that we need, not something that is extravagant. In fact Congress put time out on the big dig and said no more, we are not doing this. So we are a little bit skeptical of the cost-to-complete program.

It talked about Performance Provisions – we're all for performance provisions. The State of Montana has got great performance provisions. What we are afraid of is it will be somebody else's performance. We don't mind them as long as you let the states tell you what those performance provisions are going to be and the states will meet them. We're concerned about who is going to establish the performance provisions. And are they going to do it by cost-per-mile or a user-per-mile and with the rural states, let's face it, every highway we build doesn't cost itself out based on the users of the roadway. So that is an area that the rural states are very concerned about, and particularly what Montana is concerned about.

Project simplification – again the devil is in the details. The way you simplify the program the more money goes into the core. Some of the examples they are using are actually creating more programs, more projects, commercial lanes, truck lanes and that type of thing. You aren't really streamlining, you aren't really bringing the system to something that is workable especially in rural states. So those are areas that we are concerned about.

We feel they fell short on freight – they used freight in this report to talk about the need to deal with congestion. I think it was convenient; it is a very congested-oriented report – congestion, congestion, congestion. I haven't seen a highway yet anywhere in this country where we've added lanes that alleviate congestion. There are other things we need to look at before you look at congestion. They need to understand that Montana doesn't have congestion. Our busiest road which is Reserve Street in Missoula isn't anywhere near the congestion they are taking about. Of course that isn't even our busiest road but that is one that I see as being congested.

So we are concerned about the fact that there wasn't really a lot of attention paid to freight. Freight needs to be looked at from a system-wide basis which means not just the NHS and the Interstate, but the non-NHS's particularly in Montana where we're seeing the railroads shrinking up lines and grain elevators, agricultural products which 90% leave the State of Montana on rail, and is actually being hauled longer distances to get to the grain elevator or even to ports outside of the Montana in order to get it on a rail or a barge to get to market. I think the report used freight to strengthen their position on congestion and kind of left freight short. I think we really need to look at what's happening freight-wise in this country from a system standpoint just as we do moving cars.

Environmental stewardship – I talked about that in the approach, we're concerned. I think DOT's across the country are doing a great job with environmental stewardship with our EIS's, EA's, our streambed mitigations, and the wetlands we create. They are talking about maybe expanding the trust fund to pay for something more than that. We don't know because there isn't a lot of detail. Is that really a function of a highway department or a highway trust fund, or is that more of a function of the general fund to take care of those issues.

Tolling – we testified and I think they agreed that tolling is a tool that isn't going to work in the rural states. When they started into this report that was one of their biggies – congestion, tolling, privatizing the highways, giving it to private sectors to run and operate. Through the testimony of various people, they kind of backed off on that. Tolling is very much what they praise in here; they've also given recognition that it is not going to work in all the areas. I have to say that came from our testimony – Montana, South Dakota, North Dakota, and Minnesota's testimony.

So it's a great report; it's very broad and not a lot of real specifics. If it is to be driven down in this next reauthorization, we are going to have to pay attention to the details to assure that Montana doesn't loose in that.

There is another study commission that is dealing in the future financing and funding. I've going to give you a copy of my testimony that was given in Phoenix two weeks ago. You can read it at your leisure. Basically we talked about what the other report said and also they came out with some interim goals and what this committee was going to do. I was selected by North Dakota, Wyoming, South Dakota, and Idaho to represent them at this meeting and speak on their behalf as well as the State of Montana and highway funding and funding opportunities and some of the problems that the rural states have when they look at the funding picture for this next reauthorization. We got a lot of ink on this testimony; it was the main article in the AASHTO Journal last week. It came from the Washington Briefing which is other CEOs in other states; it was the buzz of the conversation about some of the points that we brought out reiterating this is not an NH and an Interstate System, this is a National Highway System and we need to make sure the primary and secondary roads are also functioning. And when you're dealing with congestion, you need to be looking at more other than just congestion and provide other opportunities and alternatives to move traffic other than just adding lanes.

So we got quite a bit of attention on this particular subject. Sandy did an awful lot of work helping prepare the testimony as did other states. We came together collectively as five states which I thought was very encouraging and were able to give a message and I believe they heard us. It was a different meeting than Minnesota – Minnesota was very formal, this was formal too but it was more like this. They invited you to the table to give a brief review of a 15-page report. I gave a brief review of what that a report meant. Then they went right into questions. It was kind of nice because they asked me a question and if the answer I gave them didn't set well with one of the Commissioners, they would use that answer to try and convince another Commissioner to change his idea on what he feels about tolling or congestion. So it was real good working group type testimony. I believe that it made a difference and it will make a difference.

So we are going to keep sending the message that we need to look at increasing the federal funding to the Highway Trust Fund; don't just look at gas taxes, there are other opportunities out there that can provide additional revenue into the highway program in this country and that gas taxes shouldn't be the first thing on the burner when you are looking at trying to provide additional revenue. There are additional revenue sources out there that could be used. We need to look at the Highway Trust Fund to make sure that it is actually building roads and not building something else. If there is something else that is very important, great, fund it through the General Fund. There is a Senate Bill which we support, The Senator Biden-Thune Bill, which is Build American Bonds, using general obligation bonds out of the General Fund to make sure that every state is guaranteed a certain amount of funding so that they could take on some projects that need to be done right now currently and then into the future. So it's been pretty productive.

I'm the Chairman of the Highway Transport Subcommittee for AASHTO and we had a three-day meeting dealing with different freight entities and issues. Freight is going to be a big issue and we have what they call "long container vehicle freezes" that was formed in 1991, the Laughtenberg Freeze ... (inaudible) ... which froze LCDs, existing rules and regulations in the states not to be changed. That has created states with different rules and regulations. The American Trucking Association is recommending a lot of things – they want to see larger size weights and we have to wait and see what that impact is. The Federal Government did a little study and one of their issues is to look at size and weights in the western region. Basically if they were to allow these four truck types that you can see on your sheet – different axle numbers and different grills ... (inaudible) ... based on length, you'd have a reduction

of fuel usage by 12%, reduce highway noise by 10%, reduce truck emissions by 12%, save shippers \$2 billion per year, save 25% of the truck miles traveled. That's a two edged sword because we get gas taxes based on truck miles traveled and that is something we need to consider. That's why as I said earlier, everything we do here, you really have to work full circle. If you're going to adopt something like this, you need to know what the financial impact is and where you are going to infill that financial impact. There are a lot of great ideas out here and that doesn't mean because there is financial impact you don't go with it but you need to recognize what the impacts are and how you are going to address that. The interesting one is reduced 18-wheeler traffic by 76%. It's a great statistic and if I came up with it, I'd use it too but in reality all you're doing is eliminating a tractor and because you are allowing a larger truck size and lengths, it doesn't make sense to haul a semi on your highways, you're going to be doubling up everything. But it does eliminate that power unit, so in fairness you could say that you would eliminate the power units on our highways by 76%. And that would reduce the use of western doubles by 44% because the western doubles would not be an efficient manner of travel, they would actually go with larger units. So in a way that is a good number but I think it is more for color than reality. And it would reduce truck costs by 4%.

The ATA is very interested in what they can do on truck size and weights and they've recognized their responsibility on safety. In fact they are working on proposing a national speed limit for trucks – lowering the speed limit across the country. They are also trying to get manufacturers of trucks to agree to govern all trucks that come out of the factory at 68 mph. They couldn't go any faster than 68 mph. They are looking at providing additional training for drivers and certifications for drivers on the LCD's. The reason why I'm bringing this up is because in the next reauthorization which is starting now, freight movements across this country are going to play a much bigger role than in the past reauthorizations. The doomsday talk that I hear from the Hill is that we aren't going to see a big increase in the funding bill under this next reauthorization. But that isn't doomsday necessarily for Montana. So it is really going to be important for Montana to be involved in this process to make sure if the Trust Fund and the amount of money going into highways over the next six-year bill isn't going to have any growth in it, where can we get growth within that number and how can we at least protect the growth that we've had under the past bills. So it is going to be a pretty challenging year as we move forward. We are just going to have to be involved. We are going to have to take some trips to D.C., be on the phone, analyzing information, looking at the details to eliminate the devil and there is going to be a lot of them through the next process.

Senator Griffith said with as little money as we are spending to reconstruction and just doing overlays, I can't see adding any more weight to the roads. Everything you save by making it easier for truckers to ship at less cost ends up being spent on the road system. Director Lynch said that is a very valid comment and that is going to be an argument against this. But then DOT's also have a responsibility to look at their specifications to see if there is anything new we can do to our specifications that isn't going to cost the State of Montana and other states in order to handle this particular situation. So we're going to have to play a role in that. That bad thing is that some states, even Montana, have different soil conditions east and west. For example, Arizona who doesn't want to see any length increase already has bad soils. Senator Griffith said triple trailers up and down the hills between Butte and Missoula aren't really a factor. Up the hills and down the hills aren't bad, but it's in between the locations. You get them over by Livingston in icy conditions, they are in the ditch often times. Director Lynch said in our dialogue with the American Trucking Association, they recognize that. We are not talking about not permitting them. They've stepped along ways off from their push, because they know they need to address these concerns. They agree – fair weather, no water, snow, no wind, better drivers. The big issue is if we are going to do this, what are the real costs associated with it? Sure there is some reductions but do they over rule what state's have to come up with in order to implement them.

It's a great green energy tool. You look at some of these reductions; you're right in line with carbon footprint reduction. It isn't a done deal but they want states to take a look at it and that is something we are going to be involved in to see what makes sense and what doesn't make sense. Deputy Director Jim Currie said I think it is going to be critical if the state moves to something like that, to look for other ways of funding the impacts on the highways because it reduces the roadway volume on both federal and state and potentially increases the impact on the highways and if our future funding reauthorization is not going to show a very significant increase, it poses a problem in Montana because we are already starting to see a little bit of degradation on our NHS and RSTP. We don't have enough money to keep up. Director Lynch said that a real good point and that is starting to be seen. The construction industry and the industries that are benefiting from the Highway Trust Fund, their first reaction is to raise gas taxes. However this Study Commission and the new Study Commission is recognizing that gasoline taxes can only be one methods of funding the Highway Trust Fund and we've got to look beyond just gasoline taxes and look at other funding sources.

Now there are some very positive things but they are going to reduce funding coming into the states just because of some of the reductions. Both Commissions have recognized that gas taxes can only be one of the means to fund future highway construction in this country as we move into the future. Really that is the charge of the next Study Commission – to analyze different areas or different ways to fund that highway. The talk has always been that the users should pay and I don't disagree with that, but the user of the highway system today is much different than the user even 20 years ago. The user of the highway system today is not just the cars and trucks that are driving on it; there is a tremendous social benefit and a tremendous economic benefit that the transportation system is providing throughout this country and the first place we look is the shortage in China because they are getting a tremendous benefit. The manufacturing that takes place over seas is receiving a tremendous benefit to manufacture products at low cost, not dealing with the same environmental concerns this country deals with, putting them on barges, coming into our ports, and using our transportation system to get them to the users here. And it is our system that is providing the opportunity to sell their product and I think we need to look beyond our shores and look at who is using our highways. I agree with the term that the user pays and they should pay for it, not just the vehicles that are driving in it.

Commissioner Howlett said he read something about AM Trak being viable, are we doing anything with that and if so what? Director Lynch said they are very careful about that. We volunteered to do a Feasibility Study looking at what the southern AM Trak route in Montana provided with the understanding that it would not have an affect of the northern route because that's important; that has to stay there.. We have very few service opportunities up there, we don't have a lot of long distance transportation up there, and in some cases under some weather conditions, the train is the only way that northern tier in Northern Montana can travel So that is a must and that has to stay. That is where MDT is involved in this process and we've agreed to put together a Feasibility Study and we're in the early stages of that. One of the premises of that Feasibility Study is looking at the feasibility of extending a southern route that would not have an effect on the Empire Builder – that has to stay on that particular roadway. The Empire Builder is a benefit in AM Trak's view and D.C. particularly to the rural states. Rider-ship is not a problem there; in Montana our rider-ship is increasing every year on AM Trak.

Our other involvement is also looking at what transit opportunities are in rural America. And that is what we testified to in Phoenix – this isn't just all about highways. There is some transit benefit through bus transportation in America. Commissioner Howlett said there had been several discussions in the Missoula and Hamilton communities about light rail. Those things that look on the surface to be

financially prohibitive, I don't think we ought to be saying they aren't possible. I think when we look at the capacity of Hwy 93 and the growth in those areas we are going to have to find some options. I think in those kinds of corridors, in the Bozeman area and Missoula to Kalispell area, there are a whole bunch of people. Director Lynch said he didn't think we can throw any transportation opportunity out the window. With the numbers in Montana and the direction which people go, I think our next step is looking at bus transportation. In the Hamilton area it would work very well. A bus removes a lot of vehicles off the roadway. The problem that we're having in this country, that the Europeans recognized a long time ago, is that schedules are a must. If a bus leaves at 4:00 then it leaves at 4:00; it doesn't leave at 4:25 or it isn't cancelled. We have a tremendous problem in our aviation industry in this country with cancelled flights, not on time, and everything else. They are making a tremendous push to get back on schedule. That is some of the obstacles that we have in a rural state that is the importance the schedules. Right now buses are far more economical than light rail. Light rail is limited where in rural states transit isn't. If something changes – a new factory is put in, a new school, a company or whatever, that direction can be changed relatively simple with transit. Light rail is pretty fixed from point to point. Large communities on the each coast that use light rail, San Francisco CA, those areas are point-to-point and have a lot of users; it is more of a commuter system than a transportation system. We are in the mix and we're willing to bring back what we hear in other areas and see what opportunities we have in Montana. There is going to be a tremendous amount of conversation over the next couple of years on transportation and the important thing is that Montana and the other five rural states are going to be in the forefront to make sure that when they are solving the transportation needs, they are also solving transportation needs in rural America and not just urban America.

### **Agenda Item 23: Public Comment**

Paul Dennehy addressed the Commission. Madam Chair and the Commission my name is Paul Dennehy with Lamar Advertising. I'd like to just briefly address the Administrative Rules changes. First of all if you would please check back in your notes to 2006, we went through a public hearing regarding digital signage or electronic billboards as they are now being addressed on system. In that public hearing the majority of the people who spoke or had written comment were in favor of digital or electronic billboards at that time. We've been through a process from then to now on the issue. So I'd ask that you go back and check that regarding this issue.

In regards to that, the majority of the people being in favor of them as Director Lynch's recommendation that it go back to public hearing, we would ask that if it goes back to public hearing, it goes to public hearing with the notion of "do you want or do you not want" not with the recommendation of "being prohibited." I'm not sure of the process of if that is already set, but we would like to see it go back to the public if it is to do so with the question "do you want digital or electronic messages or do you not." Not with the underline of the department's recommending prohibition.

I know that safety is probably an issue of digital but in my drive from Billings to here this morning, there are four digital signs on system right now that MDT operates regarding driver safety. So digital signage is here, it's being used, it's being used by the department. So I'd ask that you keep that in mind also.

Lastly, Commissioner Howlett, you asked about the Amber Alert – Lamar is in the process of tying into a national amber alert. In the State of Montana we only have one digital sign up now that's off system. We are looking at putting up more that are



off system but we are in the process of tying into a national amber alert process. Thank you.

### ***Agenda Item 24: Commission Discussion***

Chairman Espy said it was time for the Commission to meet to discuss the hearing we had this morning and asked Tim to sit in on that. Tim Reardon said that when the Commission recessed the Hearing on the Revocation of the Advertising Permits 20628 and 20629, the business that remained is what you would choose to do after the oral argument and after considering the record. Under the law you can adopt the Recommended Order of the Hearings Examiner, you can modify that Order, or you can reverse it and reject it. In the later two circumstances, you do have to refer to the record and specifically to the record that you have in front of you – the recorded documents, the exhibits, and so forth, and state why you conclude differently than what the Hearings Examiner recommends. It's up to you.

As an appellate body, essentially, it's always difficult to decide issues related to credibility and that is part of the issue in this case – the credibility of some of the witnesses who testified. So you are going to have to go to the record specifically and identify what facts you wish to alter or amend or change. You heard the same oral argument that I did and frankly that's about the extent of my knowledge of this; it's the same documentation that you've read. If you have questions I can do my best to try and answer them but at this point it is your call. If you choose to adopt the Recommended Order, I notice that the Proposed Order has a provision that says the Department may remove or require the signs be removed and I think that's accurate. Rather than engage in further litigation if the Department goes out, and I'm not sure I know what these signs look like. I don't know if they are steel structure and I know it cost \$45,000, well perhaps ... I'll give you a theoretical, if you decide to adopt the Recommended Order that you include some specifics, some time frame for the owner to remove the structure, and in the interim to remove any advertising of any kind whatsoever, whether it be commercial, a private business, residence for sale sign, political advertising, or anything. If you're going to revoke the permits then you are going to revoke the permits – you can't do anything there. If he wants to get a different permit, then he'll have to come in and apply for a different permit and a different sign.

So the issue in this case as far as I'm concerned and your decision is going to be to revoke these permits -- that's the threshold question based on the recommendation of the Hearings Officer. That was his recommendation that the permits be revoked. That realistically means those sign structures ought to come down. What I'm suggesting to you is that you establish a time frame within which the owner needs to do that – 60 days, 90 days, whatever. But in the interim that you also make it clear that there can be no use of that structure for advertising. And that, if in the event he should do so, the Department would be authorized to go in upon 10 days notice or something, and get them removed.

If you want to modify the Order, go to the record, find the facts that you wish to alter or amend and conclude that there is not substantial evidence or that there is other evidence that is equally or more credible, you can do that and you can deny or reverse the Hearings Examiner's Decision and say you are not going to revoke the permits. That is really where this sits with you. My expectation of this is that this will probably get appealed if you decide to adopt this Recommended Order, but as a practical matter, I think you can still set some conditions on not allowing it to be used. For one thing if you decided to adopt this Order and you don't put some restrictions on the ability to use this, he's getting a free ride until the District Court or some court somewhere decides contrary. So I think you need to put some parameters on that if that is where you want to go. I can't advise you on which

decision to make, that's up to you. You heard everything that I heard, and you've read everything that I've read. But however you decide to write the Order if anybody wants to take the transcript and listen to it, we will make that available to you. If you want to have that printed, we will get that printed and we will get it to you immediately. That's up to you.

Commissioner Espy asked if anybody felt they needed a copy of the transcript. Commissioner Griffith said it does go to the issue of credibility in the end. I'm of the opinion that somebody is not being totally honest. Not telling us all the facts or what they are telling us is how it was constructed and how it came down, from my observation. I didn't hear anything that would compel me to think that the Hearings Examiner erred. The idea of an "e" on the end of a name, and as I look at it, it had the appearance in my mind, and I realize I'm on the record, but it had the appearance in my mind of some sense of urgency because of zoning or the potential of zoning. It was unclear to me whether or not the landowner intended to try to create a business using people who were his renters as entrepreneurs – they didn't fix computers but they had a sign that said that and the sign was there for over a year and did that substantiate the year's requirement? The permit that was applied for was off premise so I'm confused about the sign that was on premise, the computer repair thing. So I think there was a little bit ... I sensed some deceptive practices. Commissioner Winterburn said she would go along with that conclusion also.

Tim Reardon said the time frame was not part of the original Order but felt it was important that you at least make your feelings known that you want the advertising that's being done stopped, whether they are advertising the space for lease or whatever it is, it's inappropriate based on your Order Revoking the Permits. The only patience being shown here is the timeframe for somebody to remove the signs. I don't know if this thing cost \$45,000 but my suspicion is we probably don't want our maintenance guys out there with a chain saw and snow plow taking it down. We'd probably would like to have this guy use ... the intent isn't to destroy it; the intent is to remove it. If you like I can draft an Order, circulate it to each of you, and take suggestions. I can get that to you very early next week and add any other comments to it, fix it and circulate it. Commissioner Griffith said he felt Tim Reardon understood the Commission's intent and understands what needs to go into the Order. Tim Reardon said if the Commission votes unanimously for this, you can have Commissioner Espy sign on behalf of the Commission and have the signed document recorded by Lori and issue it to the parties accordingly. Commissioner Espy asked Lori to repeat what was said:

The Commission has asked that the Hearings Officer's Order be adopted and that the landowner has 60 days for removal of signs with absolutely no advertising within that 60 days period. If they are not removed the Department will remove the signs and charge the landowner according to the Department's policy.

Commissioner Griffith moved that the Hearings Officer's Order be adopted and the landowner has 60 days to remove the signs with absolutely no advertising within that 60 day period. If the signs are not removed, the Department will remove the signs and charge the landowner according to the Department's policy. Commissioner Winterburn seconded the motion. All four commissioners voted aye.

Motion passed unanimous.

**Adjourned:** Commissioner Espy adjourned the meeting.

Commissioner Espy, Acting Chair  
Montana Transportation Commission

Jim Lynch, Director  
Montana Department of Transportation

Lori K. Ryan, Secretary  
Montana Transportation Commission